

decisions, the Government of the United States may withhold Grant payments until the issues in dispute are resolved.

8. Each government shall provide the necessary staff support to its representatives on the Committee, to enable the parties to monitor closely the use of assistance under the Compact, as amended. No United States funding shall be used to support the travel or honoraria of Committee members from the Government of the Federated States of Micronesia, or any special salaries paid for serving as members of the Committee.

#### **Article IV Grants Administration**

1. Grant funds may not be used for any purpose other than that for which they are awarded. Unobligated funds shall carry over to the following Fiscal Year for reallocation to the applicable sector Grant, unless otherwise provided in this Agreement or the Compact, as amended.

2. All terms and conditions imposed on the Government of the Federated States of Micronesia shall apply to Sub-Grantees.

3. The President of the Federated States of Micronesia, acting on behalf of the national, state and local governments of the Federated States of Micronesia, shall be responsible for all certifications to the Government of the United States pursuant to this Agreement.

4. Grant Conditions:

(a) General terms and conditions of the sector Grants shall include conformance to the plans, strategies, budgets, project specifications, architectural and engineering specifications, performance standards, and other criteria developed by the Government of the Federated States of Micronesia and concurred with by the Committee.

(b) After consultation with the Government of the Federated States of Micronesia, the Government of the United States may recommend that the Committee attach certain terms and conditions to an annual allocation to assist the Government of the Federated States of Micronesia to achieve the goals of the sector Grant.

(c) Other special conditions or restrictions may be required by the Government of the United States during the course of the Grant year if it determines that the Government of the Federated States of Micronesia or a Sub-Grantee has a history of unsatisfactory performance, is not financially stable, has not conformed to terms and conditions of previous awards, or is otherwise not responsible. Special conditions or restrictions may include:

- (1) Payment on a reimbursement basis;

- (2) Withholding authority to proceed to the next phase of the Grant until receipt of evidence of acceptable performance within a given period;
  - (3) Requiring additional, more frequent and/or detailed financial reports;
  - (4) Providing for additional project monitoring;
  - (5) Requiring the acquisition of technical or management assistance; and
  - (6) Requiring additional Prior Approvals.
- (d) If the Government of the United States imposes such conditions as stated above in clause (c), it shall immediately notify the Government of the Federated States of Micronesia in writing of its intent. This notification shall include a description of the:

- (1) Nature of the special conditions or restrictions;
- (2) Reasons for imposing them;
- (3) Corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and,
- (4) Method of requesting reconsideration of the conditions and restrictions imposed.

(e) If the explanation from the Government of the United States or any subsequent discussion between the Government of the United States and the Government of the Federated States of Micronesia is disputed, the Government of the Federated States of Micronesia may submit an Appeal in writing to the Implementing Agency of the Government of the United States. This Appeal must be initiated within 30 days of the receipt of a sector Grant award or a notification of intent to impose special conditions. In such case, the Appeal for reconsideration will be handled in accordance with established administrative procedures of the Implementing Agency.

5. Payment Procedures:

- (a) Establishment of Account. The Government of the Federated States of Micronesia shall establish an account with a bank or commercial financial institution organized in accordance with the laws of the United States or a State of the United States; or, subject to the approval of the Government of the United States, a bank or commercial financial institution in accordance with the laws of the Federated States of Micronesia, in either case for the purpose of receiving payments of Grant funds pursuant to the Compact, as amended, and this Agreement. The Government of the Federated

States of Micronesia shall provide the Government of the United States with wiring instructions with respect to such account.

(b) Advance Payment. In general, payments for Operational Grants under the Compact, as amended, shall be made monthly, as set forth below, in advance. The amounts of the payments will match the percentage of the Fiscal Year to be completed during the advance period, or may be based on an outlay analysis performed by the Government of the Federated States of Micronesia and concurred with by the Government of the United States.

- (1) Periodic Payments. The first payment of each Fiscal Year for Operational Grants will be sufficient to fund financial requirements for the first two months of each Fiscal Year. All other payments will be made on or about the first Business Day of each month (except that no payment shall be made on the second month of each Fiscal Year) to fund financial requirements of that month.
- (2) Operational Reserve Account. The Government of the Federated States of Micronesia shall establish an interest-bearing account that complies with the terms and conditions of this clause (2) (the "Operational Reserve Account"). The Operational Reserve Account shall be established at a financial institution that complies with the requirements of Article IV, section 5(a). On or about the date on which the first payment in respect of Operational Grants is made during each Fiscal Year, the Government of the United States shall deposit into the Operational Reserve Account an amount equal to one-fifty-second ( $1/52$ ) of the aggregate amount of funds in respect of Operational Grants that will be payable to the Government of the Federated States of Micronesia during such Fiscal Year. The amount deposited into the Operational Reserve Account during any Fiscal Year shall be credited toward the final payment in respect of Operational Grants during such Fiscal Year. Provided that all conditions to the obligation of the Government of the United States to make payments in respect of Grants have been satisfied and the Government of the United States is not entitled to effect a Withholding or Suspension, the principal balance of the Operational Reserve Account (which, for the avoidance of doubt, shall not include any interest or other earnings paid or accrued with respect to the Operational Reserve Account) as of the date of the final payment in respect of Operational Grants during any Fiscal Year shall be released to the Government of the Federated States of Micronesia as part of such final payment. Interest, and other earnings on the Operational Reserve Account shall be paid to the Government of the United States promptly from time to time when earned. Except as set forth above, funds on deposit from time to time in the Operational Reserve Account shall be used solely to cover unanticipated delays of payments from the Government of the United States of funds in respect of Grants, provided that the

Government of the United States shall approve any such use of funds in the Operational Reserve Account (which approval shall not be unreasonably withheld). In the event that any amount of funds from the Operational Reserve Account is used in accordance with the immediately preceding sentence, then such amount shall be deducted from the next payment from the Government of the United States of funds in respect of Grants and the amount so deducted shall be deposited into the Operational Reserve Account. Notwithstanding any other provision of this Agreement, the Government of the United States shall be entitled to withdraw all amounts on deposit in the Operational Reserve Account at any time that the Government of the United States is entitled to effect a Withholding or Suspension. The Government of the Federated States of Micronesia and the Government of the United States shall review the continued need for the Operational Reserve Account from time to time, and may discontinue its use upon mutual consent.

- (3) Advances for Accrued Expenditures. All infrastructure projects and projects that are not funded by Operational Grants will be paid on the basis of Accrued Expenditures, provided the Government of the Federated States of Micronesia maintains procedures to minimize the time elapsing between transfer of funds and their disbursement.

(c) Breach of Terms and Conditions:

- (1) Withholding of Payments. The Government of the United States may withhold payments, including reimbursement payments, with respect to any Grant if the Government of the Federated States of Micronesia is in breach of any of the terms and conditions of Title Two of the Compact, as amended, or this Agreement with respect to such Grant, fails to comply with any award condition with respect to such Grant, or is indebted to the Government of the United States with respect to such Grant. The amount of the withholding shall be proportional to the breach of the term or condition. If the Government of the Federated States of Micronesia disputes the withholding of payments with respect to a Grant, it may submit an Appeal in writing to the Implementing Agency of the Government of the United States. That Appeal must be initiated within 30 days of the receipt of notice of withholding of payment. In such case, the Appeal for reconsideration must be handled in accordance with established administrative procedures of the Implementing Agency. Cash withheld for failure to comply with Grant terms shall be released upon subsequent compliance, provided that such Grant has not been revoked pursuant to any applicable Appeal or dispute resolution proceeding.

- (2) Suspension. Notwithstanding any other provision of this Agreement, the Government of the United States may suspend payment with respect to any or all sectors in the event that the Government of the United States reasonably determines that the Government of the Federated States of Micronesia has engaged in a pattern of gross negligence, willful misconduct or material breach of terms and conditions with respect to the use of financial assistance provided under the Compact, as amended, provided that such determination is made on a sector by sector basis. If the Government of the Federated States of Micronesia disputes the Suspension of Grant assistance under this sub-paragraph, it may seek to resolve the matter through the conference and dispute resolution procedures set forth in Article II of Title Four of the Compact, as amended. The Suspension of payment shall stand unless otherwise determined through the conference and dispute resolution process described in Article II of Title Four of the Compact, as amended.

#### **Article V** **Pre-Award Requirements**

1. Planning As a Requirement of Economic Assistance:

(a) No later than 90 days after the effective date of Title Two of the Compact, as amended, and thereafter at appropriate intervals, the Government of the Federated States of Micronesia shall prepare and submit to the Government of the United States a "Multi-Year Rolling Development Plan" pursuant to section 211(f) of Title Two of the Compact, as amended (the "Development Plan"). The Development Plan shall be strategic in nature and continuously reviewed and updated through the annual budget process. It shall identify the goals and broad strategies of the Government of the Federated States of Micronesia to promote economic advancement, budgetary self-reliance, and economic self-reliance, and contain specific multi-year objectives for the sectors described in section 211(a) of the Compact, as amended. Each of the sectors so named, or other sectors as agreed to by the Committee, shall be accorded specific treatment in the Development Plan. Those portions of the Development Plan that contemplate use of United States Grant funds require the concurrence of the Committee.

(b) United States sector Grant assistance shall be made available in accordance with annual implementation plans developed by the Government of the Federated States of Micronesia in conjunction with its budget process. The Government of the Federated States of Micronesia shall submit the plan for the division of annual economic assistance among the sectors described in Article II of this Agreement and, for each sector, the proposed expenditures and related performance goals and measures for the next Fiscal Year to the Government of the United States for review no later than 90 days prior to the beginning of the Fiscal Year. Annual Grant budgets by sector should provide:

- (1) Actual expenditures in the most recently completed Fiscal Year;
  - (2) Appropriated Grant amounts and estimated expenditures in the current Fiscal Year;
  - (3) Estimated Grant requirements for the upcoming Fiscal Year, including a detailed breakdown of personnel expenditures and compensable staff years, travel and other objects;
  - (4) Specific performance indicators for each sector;
  - (5) Funds provided to each sector in the current and upcoming Fiscal Years by United States Federal programs, international donors and local, state or national governments; and
  - (6) Any available planning estimates for ensuing Fiscal Years.
- (c) Changes to sector Grant priorities or performance goals of the Government of the Federated States of Micronesia during the course of the Grant year shall have the concurrence of the Government of the United States.
- (d) In accordance with section 214 of Title Two of the Compact, as amended, the Government of the Federated States of Micronesia shall prepare and submit an Annual Report in February of each year to the President of the United States on the use of Grant assistance and other assistance provided by the Government of the United States during the previous Fiscal Year, and on the progress of the Federated States of Micronesia in meeting mutually agreed program and economic goals.
- (e) The Government of the Federated States of Micronesia shall develop and submit a nationwide infrastructure development plan ("IDP") to the Government of the United States for review. Projects may be phased over two or more years. The annual implementation plan for the infrastructure sector referred to in (b) above, shall include a list of integrated state and national priorities for new and reconstructed capital infrastructure to be financed by Compact funds, cost requirements, and implementation schedule. This project list and any revision thereto shall be submitted to the Government of the United States. Insofar as Grant funds are involved, the IDP shall be subject to the concurrence of the Committee.

2. Annual Budget Consultation:

- (a) The Government of the United States shall evaluate the proposed sector Grant budgets of the Government of the Federated States of Micronesia to ascertain consistency with the funding requirements of the Compact, as amended, and its related agreements, the appropriateness of performance objectives and indicators, and the adequacy of expenditures in achieving stated purposes. Upon the completion of the review, the Government of the United States and the Government of the Federated States of Micronesia shall confer to discuss any need for special terms or conditions and to make adjustments to the annual sector

Grant budgets or implementation plans as may be appropriate prior to the awarding of Grants. This consultation shall occur before the meeting of the Committee but not later than 30 days after the receipt of the implementation plans and proposed budgets by the Government of the United States.

(b) The Committee shall receive and review the progress reports and annual proposed budgets and implementation plans of the Government of the Federated States of Micronesia, and approve sector Grant allocations no later than 30 days before the beginning of the Fiscal Year. Consistent with the provisions set forth in Article III of this Agreement, the Committee may establish alternative funding levels, special Grant terms and conditions or other actions it deems appropriate to help the Government of the Federated States of Micronesia meet the stated goals and objectives of the Compact, as amended.

3. Notification of Grant Acceptance:

(a) The Government of the United States shall forward official Grant award notices to the Government of the Federated States of Micronesia no later than October 1 of each year.

(b) Return of signed Grant awards by the President of the Federated States of Micronesia shall signify acceptance of the funding amounts and any Grant terms and conditions that may be attached to the sector Grants.

**Article VI**  
**Post-Award Requirements**

1. Financial Administration:

(a) Standards for Financial Management Systems:

(1) The Government of the Federated States of Micronesia shall expend and account for funds provided pursuant to the Compact, as amended, in accordance with its laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the Government of the Federated States of Micronesia, as well as its Sub-Grantees and cost-type contractors, shall be sufficient to:

- (i) Permit preparation of reports required by this Agreement and the Compact, as amended; and,
- (ii) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have been used in compliance with the provisions of the Compact, as amended, and applicable agreements.

(2) The financial management systems used by the Government of the Federated States of Micronesia shall meet the following standards:

- (i) Financial Reporting. Accurate, current, and complete disclosure of the financial results of United States funded activities shall be in accordance with the reporting requirements of the sector Grant or Sub-Grant.
- (ii) Accounting Records. Accounting records shall adequately identify the source and application of funds provided for all sector Grant activities. These records must contain information pertaining to awards and authorizations, Obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
- (iii) Internal Control. The system shall maintain effective controls and accountability for all Grant and Sub-Grant cash, Real Property and personal property, and other assets to safeguard and ensure uses are solely for authorized purposes.
- (iv) Budget Control. Actual expenditures or outlays must be compared with budgeted amounts for each Grant or Sub-Grant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the Grant terms and conditions. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
- (v) Allowable Cost. Applicable cost principles and Grant terms shall be followed in determining the reasonableness and allowability of costs. An Indirect Cost rate may not be charged against funds provided pursuant to the Compact, as amended.
- (vi) Source Documentation. Accounting records shall be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, Contract and Sub-Grant award documents, and other financial data.
- (vii) Cash Management. Compact payments shall be made in accordance with Article IV of this Agreement. To the extent that the Government of the Federated States of Micronesia awards Sub-Grants to states, local governments or other entities, it shall establish reasonable procedures to ensure the timely receipt of reports on cash balances and cash disbursements to enable the preparation of complete and accurate cash transactions reports.



- (viii) The Government of the United States may review the adequacy of the financial management system of any recipient of financial assistance provided pursuant to the Compact, as amended, at any time.

(b) Financial Reports:

- (1) Quarterly Financial Reports. The Government of the Federated States of Micronesia shall provide the following financial reports each fiscal quarter to the Government of the United States. These reports will be used to monitor the general budget and fiscal performance of the Government of Federated States of Micronesia and to monitor disbursement or outlay information for each sector Grant.
- (i) The Government of the Federated States of Micronesia shall submit the following reports 30 days after the end of each fiscal quarter: (1) a statement of revenues and expenditures for governmental fund types, and (2) a comparison of budget and actual expenditures by function for governmental fund types.
- (ii) The quarterly report for all Operational Grants shall contain a budget execution report for each function and include major offices, cost centers and budget activities.
- (iii) For all Grants provided pursuant to the Compact, as amended, the Government of the Federated States of Micronesia shall submit a quarterly financial status report on form SF-269 or any successor thereto, as issued by the Government of the United States from time to time ("Standard Form SF-269") and a quarterly federal cash transactions report on form SF-272 or any successor thereto, as issued by the Government of the United States from time to time ("Standard Form SF-272"). The Government of the Federated States of Micronesia may use the Federal forms available for this purpose or, as mutually agreed, provide the information in an alternative format.
- (2) Annual Financial Report(s). The Government of the Federated States of Micronesia shall submit a final cash transactions report for each sector Grant 90 days after the end of the funding period. For Operational Grants, the purpose of this report is to establish the amount of unobligated Grant funding that will carry over to subsequent Fiscal Years.
- (3) The Government of the United States may extend the due date of any financial report upon receiving a justified request from the Government of the Federated States of Micronesia.

- (4) Accounting Basis. The Government of the Federated States of Micronesia shall report on a cash or accrual basis consistent with its own policies. Provided the information is not changed in substance, the format of the report may be adapted when reporting is accomplished with the aid of automated data processing Equipment.

(c) Period of Availability of Grant Funds:

- (1) Funding for each Grant, other than Grants for infrastructure and other Grants that are not Operational Grants, shall generally be available for one year. Funding for infrastructure and projects that are not funded by Operational Grants shall be available for obligation for the time period described in the terms and conditions of the sector Grants.
- (2) The Government of the Federated States of Micronesia shall liquidate all Obligations incurred under a Grant not later than 90 days after the end of the funding period or as otherwise mutually agreed, to coincide with the submission of the final annual cash transactions report.

(d) Changes, Property, and Sub-Awards:

- (1) Budget Changes. Re-allocation of funds from one sector to another sector shall not be permitted during the course of the Grant year. Except as set forth below, the Government of the Federated States of Micronesia may reprogram up to 15 percent of the total budget or \$1,000,000, whichever is less, within an approved sector Grant to meet unanticipated requirements and make limited program changes to approved projects. However, unless waived by the Government of the United States, the following changes in budgets and projects during the course of the Grant year shall require prior written approval of the United States:
  - (i) Budget Changes in Non-Construction Projects. Except as stated in the Grant document, the Government of the Federated States of Micronesia shall obtain Prior Approval whenever any of the following changes is anticipated:
    - (1) any revision that would result in the need for additional funding over and above the original award, and
    - (2) cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities that exceed or are expected to exceed the threshold described above in sub-clause (1) of clause (d).
  - (ii) Construction Projects. The Government of Federated States of Micronesia shall obtain prior written approval for any

budget revision that would result in the need for additional funds.

- (2) Programmatic Changes. The Government of the Federated States of Micronesia shall obtain Prior Approval whenever any of the following actions is anticipated:

- (i) Any revision of the scope or performance objectives of the sector Grant or infrastructure project;
- (ii) The need to extend the period of funding availability;
- (iii) Changes in key persons specifically named in a Grant award; and,
- (iv) The contracting out or otherwise obtaining the services of a third party to perform non-construction related activities that are central to the purposes of the Grant. This approval is in addition to the requirements described below in clause (j) but does not apply to the procurement of Equipment, Supplies, and general support services.

(e) Real Property:

- (1) Title. Subject to the Obligations and conditions set forth in this section, title to Real Property acquired with funds provided pursuant to the Compact, as amended, shall vest upon acquisition in the Government of the Federated States of Micronesia.
- (2) Use. Except as mutually agreed by the Government of the Federated States of Micronesia and the Government of the United States, Real Property acquired with funds provided pursuant to the Compact, as amended, shall be used as long as needed for the purposes originally authorized, and the Government of the Federated States of Micronesia shall not dispose of or encumber Real Property titles or other interests.
- (3) Disposition. When Real Property is no longer needed for the originally authorized purpose, the Government of the Federated States of Micronesia and the Government of the United States shall consult on the choice of one of the following disposition alternatives:
  - (i) Retention of Title. If the Real Property will continue to be used for a public purpose, the Government of the Federated States of Micronesia shall retain title.
  - (ii) Sale of Property. The Government of the Federated States of Micronesia may sell the property and reimburse the Compact accounts held by the Government of the United

States. The amount due shall be calculated by applying the percentage of the original price paid by United States funding to the proceeds of the sale after deducting any actual and reasonable expenses. Any funds reimbursed shall be considered unobligated funding under the Compact, as amended, to be reallocated to sector Grants.

- (iii) Transfer of Title. The Government of the Federated States of Micronesia may transfer title to a third party approved by the Government of the United States.

(f) Equipment:

- (1) Title. Subject to the Obligations and conditions set forth in this section, title to Equipment acquired with funds provided pursuant to the Compact, as amended, will vest upon acquisition in the Government of the Federated States of Micronesia.

- (2) Consistent with paragraphs (3) through (5) of this clause (f), the Government of the Federated States of Micronesia shall use, manage and dispose of Equipment acquired with funds provided pursuant to the Compact, as amended, in accordance with its laws and procedures.

- (3) Use:

- (i) Equipment shall be used in the program or project for which it was acquired as long as needed. When no longer needed for the original purpose, the Equipment may be used in other activities currently or previously supported by an agency of the Government of the United States.
  - (ii) Equipment acquired with Grant funds provided pursuant to the Compact, as amended, may be used by other projects or programs currently or previously supported by the Government of the United States, provided such use does not interfere with the work on activities funded pursuant to the Compact, as amended, for which such Equipment was originally acquired.
  - (iii) Unless specifically permitted by Grant terms and conditions, Equipment acquired with funds provided pursuant to the Compact, as amended, to provide services for a fee may not be used to compete unfairly with private companies that provide equivalent services.

- (4) Management Requirements. Procedures for managing Equipment, whether acquired in whole or in part with funds provided pursuant to the Compact, as amended, shall meet the following minimum requirements:

- (i) Property records shall be maintained which include: (1) a description of the property, (2) a serial number or other identification number, (3) the source of property, (4) who holds title, (5) the acquisition date and cost of the property, (6) the percentage of United States funding used in the purchase, (7) the location, use and condition of the property, and (8) any ultimate disposition data including the date of disposal and sale price.
  - (ii) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  - (iii) A control system shall be developed to ensure adequate safeguards against property loss, damage or theft. Any loss, damage, or theft shall be investigated.
  - (iv) Adequate maintenance procedures shall be developed to keep the property in good condition.
  - (v) If the property is sold, proper sales procedures shall be established to ensure the highest possible return.
- (5) Disposition. When Equipment acquired with funds provided pursuant to the Compact, as amended, is no longer needed for the original project or program, or for other activities supported by other agencies of the Government of the United States, it shall be disposed as follows:
- (i) Items of Equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the Government of the United States.
  - (ii) Items of Equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold. The Government of the Federated States of Micronesia may sell the property at fair market value and reimburse the Compact accounts-held by the Government of the United States. Any such funds shall be considered unobligated funding for reallocation to sector Grants.
- (g) Supplies. Title to Supplies acquired with funds provided pursuant to the Compact, as amended, will vest, upon acquisition, in the Government of the Federated States of Micronesia.
- (h) Sub-Awards to Debarred and Suspended Parties. The Government of the Federated States of Micronesia shall not award funds received pursuant to the Compact, as amended, to any party which is debarred, suspended or otherwise excluded from and ineligible for participation in United States assistance